

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARIO CASTRO,

Defendant.

Case No. 2:19-cr-00295-GMN-NJK

**ORDER**

Pending before the Court is Defendant Mario Castro's emergency motion for reconsideration of detention order. Docket No. 106. The Court has considered Defendant's motion and exhibits, the United States' response, and Defendant's reply. Docket Nos. 106, 107, 108, 113, 115. For the reasons stated below, the Court DENIES Defendant's motion. Docket No. 106.

**I. BACKGROUND AND PROCEDURAL HISTORY**

On November 12, 2019, a grand jury sitting in Las Vegas, Nevada issued an indictment charging Defendant with conspiracy to commit mail fraud, in violation of Title 18, United States Code, Section 1349; and mail fraud, in violation of Title 18, United States Code, Section 1341. Docket No. 1. On November 13, 2019, Defendant made his initial appearance before this Court. Docket No. 17. The Court appointed counsel to represent Defendant and, after counsel for the United States and for Defendant said they were ready to proceed, the Court held a detention hearing. *Id.*

After hearing the representations of counsel, the Court ordered Defendant detained, as a risk of nonappearance, pending trial. *Id.* The Court found:

The Court finds that the defendant has dual citizenship with the United States and Mexico. The defendant was raised in Mexico and has extensive family in Mexico. The defendant has traveled to Mexico extensively. If convicted, the defendant is facing, on the

1 low end of the guideline range, approximately seventeen years in  
2 custody. The defendant has a history of ignoring cease and desist  
3 orders from the Postal Service, changing the names of his  
4 businesses, and continuing on with his illegal conduct. The  
5 defendant has been identified as one of the two leaders of the alleged  
6 conspiracy. The government submits that this defendant, as part of  
7 the activities alleged in the Indictment, came into large amounts of  
8 cash that have not been accounted for. When a target letter was  
9 given to the defendant in February of 2019, the defendant fled to  
10 Mexico prior to Indictment. As a result, the Court finds that there  
11 are no conditions or combination of conditions that the Court could  
12 fashion at this time to reasonably assure the defendant's future  
13 appearance in Court. Accordingly, the defendant is ORDERED  
14 DETAINED pending trial.

15 Docket No. 52 at 3.

16 On November 27, 2019, Defendant filed a motion for review of the undersigned's order of  
17 detention. Docket No. 54. After considering Defendant's motion, the United States' response,  
18 and Defendant's reply, Docket Nos. 54, 57, 58, United States District Judge Gloria M. Navarro  
19 denied Defendant's motion. Docket No. 59. Judge Navarro found that the United States proved  
20 by a preponderance of the evidence that "Defendant poses a flight risk and that no condition or  
21 combination of conditions will reasonably assure his appearance." *Id.* at 7. Judge Navarro  
22 therefore found that Defendant was correctly ordered detained pending trial. *Id.*

23 On June 25, 2020, Defendant filed the instant motion for reconsideration of the order  
24 detaining him pending trial.<sup>1</sup> Docket No. 106. Defendant submits that, since December 2019,  
25 circumstances have changed in a manner that warrants reopening his detention hearing. *Id.* at 4.  
26 Specifically, Defendant submits, a declaration provided by his former attorney combined with  
27 information extracted from his cellphone demonstrate that he did not flee to Mexico in response  
28 to the United States' investigation of him. *Id.* Further, Defendant submits that the discovery  
produced thus far demonstrates that he "ceased his printing activities once told not to do so by  
government officials and did not flagrantly ignore seven cease and desist letters." *Id.* Instead,  
Defendant submits, an email cited in the complaint indicates that he operated a legitimate printing

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<sup>1</sup> Although Defendant labels his motion a motion for reconsideration of the Court's  
detention order, he cites to the statute for reopening the detention hearing. Docket No. 106 at 9.  
*See also* 18 U.S.C. § 1942(f)(2). The Court, therefore, analyzes Defendant's motion as a request  
to reopen his detention hearing.

1 business and that Patricia Kern operated the fraudulent business. *Id.* At 4-5.

2 Defendant submits that his memorandum of interview demonstrates that he can comply  
3 with court orders. *Id.* at 5. Specifically, Defendant submits, on February 28, 2018, he wanted to  
4 talk to investigators and answer questions. *Id.* at 6. Defendant submits that he spoke with  
5 investigators for nearly four hours and voluntarily gave them passwords to his bank accounts and  
6 cell phone. *Id.* At the end of the interview, Defendant submits, investigators served him with a  
7 temporary restraining order. *Id.* Defendant submits that the indictment alleges that the conspiracy  
8 ended in February 2018; therefore, he complied with the restraining order, demonstrating that he  
9 will comply with court orders. *Id.*

10 Defendant further submits that his attorney, Don Chairez, advised him after he received the  
11 target letter that he could travel to Mexico for business purposes. *Id.* Therefore, Defendant  
12 submits, he traveled to Mexico in early 2019 on the advice of counsel “for the sole purpose of  
13 establishing an irrigation business.” *Id.* at 7. Defendant relies upon messages and emails to  
14 demonstrate that he traveled for business purposes and that he ultimately abandoned the irrigation  
15 venture. *Id.* at 7-8. Defendant submits that he returned to the United States in April 2019 and  
16 contacted Inspector Bouchie in July 2019 to inform the inspector that he was in Las Vegas. *Id.* at  
17 8. Defendant further submits that he traveled to Mexico for one week in September 2019 and  
18 purchased a round-trip ticket. *Id.* Defendant further submits that he did not have the financial  
19 means to relocate to Mexico. *Id.* Defendant asks the Court to reopen his detention hearing in light  
20 of what he says is new information “as well as the ongoing COVID-19 pandemic. *Id.* at 9.

21 In response, the United States submits that Defendant failed to submit new material  
22 information sufficient to reopen his detention hearing. Docket No. 113 at 2. Specifically, the  
23 United States submits that the information Defendant now provides about his trip to Mexico is not  
24 new information to Defendant and, in any event, does not ring true. *Id.* at 2. The United States  
25 submits that Defendant’s cell phone records demonstrate that he had no plan to return to the United  
26 States when he left for Mexico shortly after receiving the target letter and that, when he did return,  
27 he purchased his return ticket two days prior to his flight. *Id.* Further, the United States notes,  
28 Defendant did not claim that his trip to Mexico was a pre-planned business trip at his initial

1 appearance, *id.* at 5, or in his subsequent motion to review this Court’s detention order, *id.* at 6.  
2 See also Docket No. 54 at 5 (Defendant’s motion for review of detention order, stating that he  
3 “voluntarily returned from a *personal* visit to Mexico...”)(emphasis added).

4 The United States further submits that the filings in a separate civil injunction case is not  
5 new information. Docket No. 113 at 8. The case was filed in February 2018 and closed in  
6 November 2018, one year prior to the detention hearing in this case, the United States submits. *Id.*  
7 Further, the United States submits that the civil case did not implicate defendant because he was  
8 not a defendant in that case, but that the indictment in the instant case does implicate him and  
9 demonstrate that he failed to comply with cease and desist letters. *Id.* at 9. The United States also  
10 submits that Defendant’s effort to speak with a postal inspector in July 2019 and the items found  
11 in his home during a search are not new information. *Id.* The United States submits that, while  
12 the emergence of COVID-19 is new, it does not impact Defendant’s risk of flight. *Id.* Further, the  
13 United States submits that, even if Defendant had submitted new information, none of it  
14 undermines the prior decisions to detain him. *Id.* at 9-11.

15 The United States further submits that COVID-19 does not provide a basis for temporary  
16 release in the instant case. *Id.* at 12. The United States submits that Defendant is “well below” 65  
17 years of age and has been diagnosed with renal hypertension and type 2 diabetes without  
18 complications. *Id.* at 13. The United States submits that, since Defendant can control his diabetes  
19 and hypertension with medication, the conditions alone do not constitute a sufficient basis to grant  
20 him temporary release. *Id.* Additionally, the United States submits that the Nevada Southern  
21 Detention Center (“NSDC”), where Defendant is currently housed, “has a track record of  
22 effectively protecting detainees against COVID-19 and preventing a few isolated cases from  
23 becoming outbreaks.” *Id.* The United States cites to specific policies and protocols put in place  
24 at NSDC to protect detainees. *Id.* at 13-15. Finally, the United States submits that Defendant has  
25 failed to demonstrate that his risk is great of contracting COVID-19 is greater at NSDC than it  
26 would be at his daughter’s house, where he proposes to live with his wife and daughter. *Id.* at 15.  
27 Therefore, the United States asks the Court to deny Defendant’s motion. *Id.* at 16.

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1 In reply, Defendant submits that the “facts and information” surrounding his business trip  
2 in Mexico “were developed long after” the original detention hearing in the case after counsel  
3 learned that Defendant used a cell phone that had not been seized at the time of his arrest. Docket  
4 No. 115 at 1-2. Defendant further submits that examination of the phone’s contents revealed  
5 emails and messages that supported his argument that his Mexico trip was a business trip. *Id.* at  
6 2. Additionally, Defendant submits that the information regarding Mr. Chairez’s advice that he  
7 could travel to Mexico was unverified until Mr. Chairez signed his declaration. *Id.*

8 Defendant further submits that he had no access to the cease and desist orders referenced  
9 by the United States at the original detention hearing and, therefore, could not refute the argument  
10 that he ignored the orders. *Id.* at 3. Defendant submits that, if he had attempted to refute the  
11 United States’ argument prior to receiving the discovery in May 2020, the United States would  
12 have claimed his argument was unsupported by evidence. *Id.* Defendant submits that the cease  
13 and desist orders produced in discovery were directed to Patti Kern and her associates and that  
14 most of the orders predate the alleged beginning of the conspiracy in the instant case. *Id.* at 4-5.  
15 Defendant further submits that Patti Kern refutes the United States’ contention that Defendant  
16 failed to comply with cease and desist orders and that that United States’ argument is “tenuous at  
17 best.” *Id.* at 5-6.

18 Defendant submits that Patti Kern is cooperating with the United States and therefore “has  
19 every incentive to deflect responsibility away from herself.” *Id.* at 6. Nonetheless, Defendant  
20 submits, Kern’s information – disclosed in discovery on June 5, 2020 - demonstrates that he is not  
21 the leader of the conspiracy. *Id.* at 6-7.

22 Finally, Defendant submits that over ten cases of COVID-19 have been confirmed at  
23 NSDC. *Id.* at 8. While Defendant concedes that his housing unit is not currently affected, he  
24 submits that, without proper precautions, “it will only be a matter of time before the outbreak  
25 spreads to his housing unit.” *Id.* Defendant submits that, if released into the community, he “could  
26 take all necessary precautions to protect himself from COVID-19 rather than relying on other  
27 detainee[s] and NSDC staff to protect him from contracting COVID-19.” *Id.*

28 . . . .

## II. ANALYSIS

### A. Reopen Detention Hearing

“A person lawfully committed to pretrial detention has not been adjudged guilty of any crime. He had only a judicial determination of probable cause as a prerequisite to [the] extended restraint of [his] liberty following arrest.” *Bell v. Wolfish*, 441 U.S. 520, 536-37 (1979) (internal quotations omitted). The Court may detain someone on a federal offense to ensure his presence at trial and may subject him to the restrictions and conditions of detention so long as those conditions do not constitute punishment or otherwise amount to a constitutional violation. *Id.*

The Bail Reform Act of 1984 mandates that every person charged with a federal offense be given a detention hearing. 18 U.S.C. § 3142(a). If the Court finds the defendant poses a danger to public safety or a flight risk, the Court may order the defendant detained pending trial. 18 U.S.C. § 3142(f).

Title 18, United States Code, Section 3142(f) states, in relevant part, that a detention hearing may be reopened “at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.” Courts interpret this provision strictly. *United States v. Bararia*, 2013 U.S. Dist. LEXIS 67820, \*9 (D.Nev. 2013). The rule “requires that the movant, whether prosecutor or defendant, establish: (1) that information now exists that was not known to the movant at the time of the initial detention hearing, and (2) the new information is material to release conditions regarding flight or dangerousness.” *Id.* at \*10.

The Court in *United States v. Flores*, 856 F.Supp. 1400 (E.D. Cal. 1994), discussed the rationale for the rule. “There are very few proceedings in federal practice which encourage a party to be less than diligent in bringing forth all material evidence the first time a hearing is held . . . [a] rule that would not discourage a party for failing to acquire readily available evidence for presentation the first time is a rule that encourages piecemeal presentations. Judicial efficiency is not served by such a practice.” *Flores*, 856 F.Supp. at 1406.

1 Defendant, and not his counsel, is the movant referenced in Title 18, United States Code,  
2 Section 3142(f). *See United States v. Joseph*, 2012 U.S. Dist. LEXIS 112800, \*9 (D.Vt. 2012)  
3 (discussion regarding what information was known to defendant at prior detention hearing in  
4 determining whether his detention hearing should be reopened). *See also United States v. Ward*,  
5 235 F.Supp.2d 1183, 1185 (N.D.Okl. 2002) (in denying a motion to reopen the issue of pretrial  
6 detention, magistrate judge observed that “the proffered information about Defendant’s  
7 background, ties to the community and employment history were all known” at the time of the  
8 detention hearing); *United States v. Dillon*, 938 F.2d 1412, 1415 (1st Cir. 1991) (affirming refusal  
9 to reopen detention hearing for evidence from people who know Defendant since the information  
10 was available to Defendant at the time of the original detention hearing); *United States v. Hare*,  
11 873 F.2d 796 (5th Cir. 1989) (testimony from Defendant’s family and friends not new information  
12 to reopen detention hearing). *See also United States v. Martin*, 2015 WL 3464937, at \*2 (N.D.  
13 Cal. May 29, 2015) (“The test for whether proffered information is new information previously  
14 unknown to the defendant is whether the information was unknown at the time of the hearing, not  
15 whether a witness’s willingness to testify was unknown to the movant”); *United States v. Bowens*,  
16 2007 WL 2220501, \*3 (D.Az. July 31, 2007) (“The time for presenting letters ... was at the time  
17 of the [original detention hearing] ...”).

18 Information regarding his trip to Mexico was known to Defendant at the time of the  
19 detention hearing, as was any advice regarding that trip given to him by his prior attorney.  
20 Therefore, the Court finds that the information that Defendant’s Mexico trip was a pre-planned  
21 business trip does not constitute new information sufficient to reopen his detention hearing.<sup>2</sup>  
22 Similarly, at the time of his detention hearing, Defendant was aware of whether he had been served  
23 with cease and desist orders and whether he complied with those orders. Defendant’s attorney  
24 submits that he waited until certain items were disclosed in discovery prior to making an argument;  
25 however, that fact fails to demonstrate that the information is new to Defendant.

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27 <sup>2</sup> As the Court finds that this information does not constitute new information, the Court  
28 need not address the discrepancy between Defendant’s prior representation to United States  
District Judge Gloria M. Navarro that his trip to Mexico was a personal trip and his current  
representation that it was a business trip. Suffice to say, the Court finds such discrepancy  
troubling.



1 Accordingly, the Court finds that none of the information Defendant submits in his motion  
 2 constitutes information that was unknown to the movant at the time of the detention hearing.  
 3 Therefore, the Court need not reach the question of materiality and the Court denies Defendant's  
 4 request to reopen his detention hearing.

### 5 **B. Temporary Release**

6 Title 18, United States Code, Section 3142(i) allows a judicial officer to "permit the  
 7 temporary release of the person, in the custody of a United States marshal or another appropriate  
 8 person, to the extent that the judicial officer determines such release to be necessary for preparation  
 9 of the person's defense or for another compelling reason." Courts have used this provision  
 10 "sparingly to permit a defendant's release where, for example, he is suffering from a terminal  
 11 illness or serious injuries." *United States v. Hamilton*, 2020 WL 1323036, at \*2 (E.D.N.Y. Mar.  
 12 20, 2020) (citations omitted). A defendant bears the burden of establishing circumstances  
 13 warranting temporary release under § 3142(i). *United States v. Clark*, 2020 WL 1446895, at \*2  
 14 (D. Kan. Mar. 25, 2020); *see also United States v. Buswell*, 2013 WL 210899, at \*5 (W.D. La. Jan.  
 15 18, 2013) (collecting cases).

16 Most courts addressing a motion for temporary release under § 3142(i) have done so in the  
 17 context of evaluating the necessity of the defendant assisting with preparing his or her defense.  
 18 *Clark*, 2020 WL 1446895, at \*2; *see, e.g., United States v. Cecerle*, 2014 WL 31674, at \*4 (D.  
 19 Nev. Jan. 3, 2014); *United States v. Dupree*, 833 F.Supp. 2d 241, 247 (E.D.N.Y. 2011); *United*  
 20 *States v. Jeffries*, 2011 WL 182867, at \*4 (E.D.Tenn. Jan. 20, 2011); *United States v. Hazelwood*,  
 21 2011 WL 680178, at \*3 (N.D. Ohio Feb. 16, 2011). Courts considering whether pretrial release is  
 22 "necessary under § 3142(i) have considered: (1) time and opportunity the defendant has to prepare  
 23 for the trial and to participate in his defense; (2) the complexity of the case and volume of  
 24 information; and (3) expense and inconvenience associated with preparing while incarcerated.  
 25 *Cecerle*, 2014 WL 31674, at \*4.

26 Relatively little guidance exists about what qualifies as a "compelling reason" for  
 27 temporary release § 3142(i). Some courts have considered a defendant's serious medical condition  
 28 compelling. *See, e.g., United States v. Rebollo-Andino*, 312 Fed.App'x 346, 348 (1st Cir. 2009)



(noting that defendant could seek temporary release under § 3142 for medical reasons). Courts typically grant relief under § 3142(i) only “sparingly to permit a defendant’s release where, for example, he is suffering from a terminal illness or serious injuries.” *United States v. Hamilton*, 2020 WL 1323036, at \*2 (E.D.N.Y. Mar. 20, 2020); *see e.g., United States v. Scarpa*, 815 F.Supp. 88 (E.D.N.Y. 1993) (permitting the defendant’s release under the 24-hour guard of the U.S. Marshal Service at his own expense because of traumatic gunshot injury and terminal AIDS diagnosis and correctional authorities could no longer manage his medical conditions); *United States v. Cordero Caraballo*, 185 F.Supp. 2d 143, 144-47 (D.P.R. 2002) (ordering release of defendant who sustained multiple gunshot wounds, was partially paralyzed, could not walk, lost some arm function, who required the supervision of 4-5 contracted security guards on a daily basis, where Bureau of Prisons could not provide required medical care).

The Court is mindful of the unprecedented magnitude of the COVID-19 pandemic and the extremely serious health risks it presents, particularly within the jail and prison setting. However, in that context, a defendant should not be entitled to temporary release under § 3142(i) based solely on generalized COVID-19 fears and speculation. *Clark*, 2020 WL 1446895, at \*3. Instead, the court must make an individualized determination as to whether COVID-19 concerns present such a compelling reason in a particular case that temporary release is necessary. *Id.* The Court will evaluate the four following factors: (1) the original grounds for Defendant’s pretrial detention; (2) the specificity of Defendant’s stated COVID-19 concerns; (3) the extent to which the proposed release plan is tailored to mitigate or exacerbate other COVID-19 risks to Defendant; and (4) the likelihood that Defendant’s proposed release would increase COVID-19 risks to others. *Id.* The Court will not necessarily weigh these factors equally but will consider them in their entirety to determine whether a “compelling reason” exists such that temporary release is necessary in the instant case. *Id.*; § 3142(i).

### **1. *The Original Grounds for the Defendant’s Pretrial Detention***

The Court first considers the original grounds for Defendant’s pretrial detention. *Clark* 2020 WL 1446895, at \*3.; *see also Hamilton*, 2020 WL 1323036, at \*1-2 (first considering the rebuttable presumption under § 3142(e) before considering whether the COVID-19 pandemic

1 warranted temporary release under § 3142(i)); *Bararia*, 2013 WL 1907782, at \*1-2 (considering  
2 the circumstances leading to the defendant's revocation of pretrial release); *Buswell*, 2013 WL  
3 210899, at \*5 (observing that "the facts surrounding the underlying reasons for the defendant's  
4 detention are relevant to the [§ 3142(i)] analysis"). A defendant seeking temporary release under  
5 § 3142(i) has already been subject to a Court determination that his pretrial detention was  
6 warranted on the grounds that no condition or combination of conditions would reasonably assure  
7 he is not a flight risk and/or not a danger to the community. *Clark*, 2020 WL at 1446895, at \*3.  
8 Accordingly, the Court takes into consideration whether Defendant has presented such compelling  
9 reasons that effectively override or at least sufficiently counterbalance the findings that originally  
10 justified the pretrial detention order. *Id.*

11 In the instant case, the Court held a full detention hearing, at which Defendant was able to  
12 make all arguments in support of his request for release. Docket No. 17. After hearing the  
13 arguments from Defendant and the United States, the Court found that Defendant is a risk of  
14 nonappearance such that no condition or combination of conditions can be fashioned for release.  
15 *Id.* Specifically, the Court found that Defendant has dual citizenship with the United States and  
16 Mexico, that he was raised in Mexico, and that he has extensive family in Mexico. Docket No. 52  
17 at 3. The Court found that, if convicted, Defendant faces approximately seventeen years in custody  
18 at the low end of the guideline range. *Id.* The Court further found that Defendant "has a history  
19 of ignoring cease and desist orders from the Postal Service, changing the names of his businesses,  
20 and continuing on with his illegal conduct." *Id.* Additionally, the Court found that Defendant has  
21 been identified as one of the two leaders of the alleged conspiracy and that, as part of the activities  
22 alleged in the indictment, Defendant has come into large amounts of cash that have not been  
23 accounted for. *Id.* Finally, the Court found that, when a target letter was given to Defendant in  
24 February 2019, Defendant fled to Mexico. *Id.*

25 In reviewing the record, the parties' briefing, and the Pretrial Services report, the Court  
26 finds that the original grounds for detention were strong. *See United States v. Dodd*, 2020 WL  
27 1547419, at \*3 (D. Minn. Apr. 1, 2020). *See also United States v. Chambers*, 2020 WL 1530746,  
28 at \*1 (S.D.N.Y. March 31, 2020) (Defendant is "far too great a danger to the community to justify

1 his release”).

2 **2. The Specificity of the Defendant’s Stated COVID-19 Concerns**

3 The court next turns to Defendant’s stated COVID-19 concerns. *Clark*, 2020 WL at  
 4 1446895, at \*4. Defendant, who is 47 years old, raises the concern that he has been diagnosed  
 5 with type 2 diabetes and hypertension, making him more susceptible to serious illness. Docket  
 6 No. 106 at 15. See also [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html)  
 7 [precautions/people-with-medical-conditions.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html) (last visited July 22, 2020) (people with type 2  
 8 diabetes are at increased risk of severe illness from COVID-19 and people with hypertension might  
 9 be at increased risk for severe illness from COVID-19). As the United States notes, however,  
 10 Defendant’s diabetes and hypertension are controlled with medication. Docket No. 113 at 13.

11 This Court has previously found that NSDC is taking reasonable recommended  
 12 precautions, including medical staff screening new inmates for COVID-19 symptoms and risk of  
 13 exposure, isolating those deemed to be high risk, and promoting other recommended hygiene  
 14 habits. Further, among other precautions, NSDC is sanitizing all areas within the facility multiple  
 15 times per day; all guards are wearing a pouch containing hand sanitizer; CDC COVID-19 guidance  
 16 posters are posted throughout the facility; each inmate is given his/her own personal bar of soap,  
 17 which will be replaced if the inmate loses or uses it; a TeleDoc-type system is in place to allow  
 18 medical staff to conduct face-to-face video discussions with inmates; all cells in the facility can be  
 19 transitioned into negative pressure cells; and the facility has set up a CDC high risk dorm, which  
 20 is spacious and allows for spacing between occupied bunks. See *United States v. Boatwright*, \_\_\_\_  
 21 F.Supp.3d \_\_\_\_, 2020 WL 1639855, at \*6 (D.Nev. April 2, 2020).

22 The information provided by the United States Marshal Service to the Court as well as to  
 23 the United States and the Federal Public Defender is that there are currently six positive cases of  
 24 COVID-19 in NSDC. Of those six, five are ICE detainees, who are held separately from this  
 25 Court’s detainees, and one is a detainee of this Court. The Court again finds that NSDC is taking  
 26 reasonable recommended precautions in preventing COVID-19 cases and in preventing an  
 27 outbreak. See *United States v. Canada*, 2020 WL 2449344 (S.D. Ga. May 12, 2020) (denying  
 28 diabetic inmate’s motion for compassionate release based on COVID-19 concerns,

1 notwithstanding his “greater risk” of experiencing serious complications should he contract the  
 2 virus, because the inmate's federal facility “only has one active case of COVID-19 in its inmate  
 3 population”).

4 **3. The Extent to Which the Proposed Release Plan is Tailored to Mitigate or**  
 5 **Exacerbate the Defendant’s Overall COVID-19 Risks**

6 The Bail Reform Act allows for temporary release only if the Court determines such release  
 7 is “necessary” for a compelling reason. 18 U.S.C. § 3142(i). In the context of COVID-19, this  
 8 means the proposed temporary release plan should be tailored to mitigate Defendant’s overall  
 9 COVID-19 risks, not exacerbate them. *Clark*, 2020 WL at 1446895, at \*6. Thus, the Court  
 10 evaluates the extent to which Defendant’s proposed release plan is tailored to mitigate or  
 11 exacerbate the Defendant’s overall COVID-19 risks. *Id.*

12 Defendant’s proposed release plan consists solely of the following:

13 If released, Mr. Castro would reside with his daughter Caren. Caren  
 14 owns her home and has a living area set aside for Mr. Castro. Mr.  
 15 Castro would have access to his own bathroom and Caren would  
 16 provide him his own food and toiletries until Mr. Castro cleared a  
 17 14-day quarantine. After his quarantine, Mr. Castro would share the  
 living area with his wife. Caren is willing to let her father live with  
 her during the pendency of this case. Mr. Castro is willing to abide  
 by any condition of location monitoring the Court should impose.

18 Docket No. 106 at 17.

19 Defendant’s plan does not address all – or even any - aspects of public health officials’  
 20 recommendations and does not address other risk factors that would arise if Defendant were  
 21 released from custody. *Clark*, 2020 WL at 1446895, at \*6. Defendant has not set forth a record  
 22 establishing that, if he were to contract COVID-19, NSDC is unprepared to contain the virus or  
 23 care for those who may become infected. To the contrary, the Court is convinced that NSDC has  
 24 established a comprehensive plan to manage the facility during the pandemic. The record is void  
 25 of information suggesting NSDC would be unable to render appropriate medical treatment to  
 26 Defendant if he became ill.

27 Further, Defendant does not address the extent to which his risks could be exacerbated if  
 28 the Court releases him to live with his daughter, as he proposes. *See* Docket No. 106. Defendant

1 offers no evidence to explain how the proposed living situation mitigates the risk of infection. For  
 2 example, Defendant fails to explain who else has or will live in or frequent the home or identify  
 3 any screening practice or concrete COVID-19 precautions taken there. Defendant therefore offers  
 4 nothing more than mere speculation that home detention would be less risky than detention at  
 5 NSDC, which has screening practices and other reasonable COVID-19 precautions in place.

6 Defendant also fails to address the issue of the rising number of cases of COVID-19 and  
 7 the lack of hospital resources in the Las Vegas community. Defendant does not address the  
 8 capacity of Las Vegas' health care system to provide him with adequate treatment if he were to  
 9 contract the virus. In contrast, if Defendant remains at NSDC, he has access to medical care should  
 10 he become ill. NSDC has ample motivation to prevent further outbreak and to contain and manage  
 11 it for the well-being of all involved.

12 **4. *The Likelihood that Defendant's Proposed Release Plan Would Increase***  
 13 ***COVID-19 Risks to Others***

14 In considering temporary release under § 3142(i) based on circumstances related to  
 15 COVID-19, it is also appropriate for the Court to consider the likelihood the defendant's proposed  
 16 release plan would increase COVID-19 risks to others, particularly if the defendant is likely to  
 17 violate conditions of release, as Defendant has in the past. *See Clark*, 2020 WL at 1446895, at \*7.  
 18 A defendant who is unable to comply with conditions of release poses potential risks to law  
 19 enforcement officers who are already tasked with enforcing shelter-in-place orders in many cities  
 20 and counties, Pretrial Services officers who come into contact with Defendant for supervision, and  
 21 others if Defendant is taken back into custody. *Id.*

22 In this case, the Court finds that these considerations do not support release. This Court  
 23 originally detained Defendant because it found that he was a risk of nonappearance. Docket No.  
 24 52. Given the considerations discussed previously, the Court believes Defendant will likely violate  
 25 any conditions of release it may impose if it were to issue a temporary release order.

26 As another Court recently observed, "[w]hile the location monitoring that [defendant]  
 27 proposed may offer useful information about where he is, it provides little useful information about  
 28 what he is doing." *United States v. Martin*, 2020 WL 1274857, at \*4 (D.Md March 17, 2020).

1 This Court has found that Defendant continued his activities even after receiving cease and desist  
2 orders and has no reason to believe he would discontinue such activities now. Further, supervising  
3 a high-risk offender out in the community would place Pretrial Services officers at a heightened  
4 risk of contracting the virus. “[L]ocation monitoring is not a limitless resource, nor is its  
5 installation and monitoring by the United States Pretrial Services officers without risk to those  
6 personnel (who must be trained and certified to install location monitoring) given current  
7 recommendations regarding implementation of social distancing.” *Id.*

### 8 **III. CONCLUSION**


9 Defendant has not demonstrated that the information he presents regarding his trip to  
10 Mexico and the cease and desist orders is information that is new to him since the detention  
11 hearing. As a result, Defendant has failed to make a showing sufficient to reopen his detention  
12 hearing.

13 Additionally, Defendant has not established compelling reasons sufficient to persuade the  
14 Court that temporary release is necessary. None of the factors that the Court must consider weighs  
15 in Defendant’s favor. Although the Court takes Defendant’s arguments regarding his health  
16 seriously, the Court finds that NSDC has worked hard and taken precautions to minimize the risk  
17 of outbreak in the facility and that Defendant has failed to demonstrate that his proposed release  
18 plan would alleviate his overall COVID-19 risks. The Court further finds that Defendant’s  
19 proposed release plan would place Pretrial Services officers at risk in supervising him and, when  
20 the temporary release ends, law enforcement officers and the facility would be placed at risk in re-  
21 apprehending Defendant after he has had ample opportunity for contamination. Therefore,  
22 Defendant has failed to demonstrate a compelling reason that temporary release is necessary.

23 Accordingly, Defendant’s motion to reconsider detention is **DENIED**. Docket No. 106.

24 **IT IS SO ORDERED.**

25 **DATED:** July 22, 2020.

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28 NANCY J. KOPPE  
UNITED STATES MAGISTRATE JUDGE